



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 7, 1998

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR98-0898

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114788.

The Tarrant County Criminal District Attorney's Office received an open records request for information regarding a particular individual tried for capital murder. The requestor seeks the information on behalf of said individual. You contend that the requested information is protected from required public disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you have raised and have reviewed the submitted representative sample of information.¹

First, we note that the submitted documents include an autopsy report. Autopsy reports prepared by a medical examiner are expressly made public by the Code of Criminal Procedure. Code Crim. Proc. art. 49.25, § 11. Therefore, you must release the autopsy report to the requestor. Furthermore, you inform this office that the documents include a search warrant. If the search warrant is supported by an affidavit and the warrant has been executed, then the search warrant affidavit is made public by article 1801(b) of the Code of Criminal Procedure.

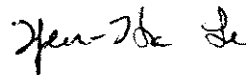
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we address your contention that all the information submitted to this office for review is protected as attorney work product. In Open Records Decision No. 647 (1996), this office held that a governmental body may withhold information under section 552.111 of the Government Code if the governmental body can show 1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380.

Here, the requestor seeks all documents pertaining to the arrest, investigation, and trial of the defendant for capital murder. "Such records shall include all records and documents pertaining to or arising from: (1) the investigation of the criminal incident, (2) the trial of the underlying matter, and (3) the investigation or prosecution of any proceedings after trial, including motions for new trial, direct appeal, and all proceedings in state post-conviction attacks on the conviction or sentence." Because the requestor in this instance seeks all the information in a particular file, we agree that, except for the autopsy report and executed search warrant affidavit, you may withhold all of the requested information pursuant to section 552.111 of the Government Code as attorney work product.

As we have resolved the matter under section 552.111, we need not address your section 552.103 claim. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 114788

Enclosures: Submitted documents

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(w/o enclosures)